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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,156	04/24/2001	Antonio Cimenti	206583	3427

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EXAMINER

LEYSON, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

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DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,156

Applicant(s)

CIMENTI, ANTONIO

Examiner

Joseph Leyson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s): _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 6-15, drawn to an apparatus, classified in class 425, subclass 308.

II. Claim 16, drawn to a method, classified in class 426, subclass 503.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, such as a process including an apparatus does not include a motor wherein it is manually operated, or a process with automatic control without a control handle.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with James R. Boler on 12 March 2003 a provisional election was made with traverse to prosecute the invention of Group I, apparatus claims 6-15. Affirmation of this election must be made by applicant in replying to this Office action. Claim 16 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they are replete with reference sign(s) not mentioned in the description, such as 61, 62, 51, 52, 54-57, 31-33, 81, 87 and 322. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. Claims 11-13 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 6-8, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 6-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 11 each recites "heavier than 0.7 lbs" which is an open ended range whose metes and bounds cannot be determined.

Claims 8 and 13 each recites "the performance of a known machine" whose metes and bounds cannot be determined.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 6, 7, 11, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gowdy(-008) in view of Pozzobon(-246).

Gowdy(-008) discloses a machine including a dough feeding hopper 6, a dough extruder including a screw extruder 8, a first cone-shaped dough distributor 7, a dough weight and dimension control apparatus with a dough dimension and extruded portion controller (p. 1, lines 80-112; p. 2, lines 1-77), a dough cutter 19 and a dough worm support 22 which supports a dough worm until the dough cutter cuts through the dough worm, thereby avoiding falling of the dough portion prior to cutting, wherein the dough extruder is adapted to cooperate with the dough cutter 19 and the extruded portion controller to produce dough portions. However, Gowdy(-008) does not disclose an interchangeable second dough distributor.

Pozzobon(-246) discloses an interchangeable dough distributor 31 for making different types and shapes of dough portions (col. 1, lines 12-23; col. 4, lines 34-41).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the dough distributor to be interchangeable with a second dough distributor because such a modification would allow the production of different types and shapes of dough portions as disclosed by Pozzobon(-246). Note that such different types and shapes of dough portions would produce dough portions of different weight. As to the specific weights of the dough

portions, such specific weights would have been found due to routine experimentation in finding operable or optimum dimensions of the dough distributor to produce the desired type and shape of the dough portion. It is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller, 105 USPQ 233.

11. Claims 8-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gowdy(-008) in view of Pozzobon(-246) as applied to claims 6, 7, 11, 12, 14 and 15 above, and further in view of Nagy et al.(-131).

Nagy et al.(-131) discloses a machine with a cutter 12 and a dough distributor 1-3 made in the form of a cone having a longitudinal axis which is substantially inclined with respect to a longitudinal development of the machine for improved cutting of dough portions by angled cutting (col. 2, line 56, to col. 2, line 46; col. 3, lines 31-42).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to further modify the dough distributor by making it in the form of a cone having a longitudinal axis which is substantially inclined with respect to a longitudinal development of the machine because such a modification would provided improved angled cutting as disclosed by Nagy et al.(-131).

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Conselvan et al.(-772) is cited as of interest.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (703) 308-2647. The examiner can normally be reached on M-F(8:30-6:00) First Friday Off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GL

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March 24, 2003


JAMES P. MACKEY
PRIMARY EXAMINER

3/24/03